

FCC MAIL SECTION

Before the
 APR 24 1996 Federal Communications Commission
 Washington, D.C. 20554

MM Docket No. 93-65

In the Matter of

Amendment of Section 73.202(b).	RM-6869
Table of Allotments.	RM-8271
FM Broadcast Stations.	RM-8272
(New Port Richey, Naples Park, Sarasota and Sebring, Florida) ¹	RM-8273

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 29, 1996;

Released: April 19, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 248 (1993), issued in response to a petition filed by WGUL-FM, Inc. ("WGUL"), requesting the substitution of Channel 288C3 for Channel 288A at New Port Richey, Florida, and modification of the license for Station WGUL(FM) accordingly.² To accommodate Channel 288C3 at New Port Richey, WGUL also requested the substitution of Channel 282A for Channel 288A at Sarasota, Florida, and modification of the license for Station WKZM(FM) to specify operation on Channel 282A.³ Highlands Media Company, Inc. ("Highlands") filed comments. WGUL filed comments and a counterproposal (RM-8721). Roper Broadcasting, Inc. ("Roper"), filed comments and a counterproposal (RM-8273). Wodlinger Broadcasting Company of Naples, Inc. ("Wodlinger") filed comments and a counterproposal (RM-8272).⁴ Roper filed reply comments.

2. Highlands, licensee of Station WWOJ, Avon Park, Florida, filed comments indicating it takes no position on the merits of WGUL's proposal. However, Highlands states

that it is involved in several proceedings which propose to substitute Channel 256A for Channel 292A at Avon Park, which would remove the impediment to the substitution at Sebring, Florida, and the C1 or C2 allotment at New Port Richey. Highlands indicates that it would not look to WGUL for reimbursement of any expenses since its proposed substitution is proceeding independently of WGUL's proposal. We note that on March 4, 1996, a *Report and Order* was released in MM Docket No. 89-455 which substituted Channel 256C3 for Channel 292A at Avon Park, Florida, and modified the license for Station WWOJ to specify operation on Channel 256C3, effective April 18, 1996.⁵ Therefore, we need not consider the allotment of Channel 292A at Avon Park in our final analysis of the remaining comments and counterproposals in this proceeding.

3. WGUL submits comments and a counterproposal with two options which WGUL identified as "Alternative 1" and "Alternative 2." WGUL also reiterates its interest and support for Channel 288C3 at New Port Richey if its counterproposal is not accepted. As Alternative 1, WGUL proposes the substitution of Channel 288C1 for Channel 288A at New Port Richey and modification of its license accordingly. WGUL indicates that Channel 288C1 can be substituted for Channel 288A at New Port Richey provided Channel 282A is substituted for Channel 288A at Sarasota (as proposed in the *Notice*) and Channel 289A is substituted for Channel 288A at Sebring, Florida, and the license for Station WCAC(FM) is modified accordingly. Stations WKZM(FM) and WCAC(FM) have consented to the respective channel changes in writing. Further, Station WCAC(FM), Sebring, has agreed to a site relocation in order to comply with the Commission's spacing requirements. WGUL has stated its intention to reimburse the respective licensees of Station WKZM(FM) and WCAC(FM) in accord with the Commission's decision in *Circleville, Ohio*, 8 FCC 2d 159 (1967). WGUL explains that the proposed substitution of Channel 289A for Channel 288A at Sebring, Florida, is no longer short-spaced to Station WWOJ, Channel 292A, Avon Park, Florida, as indicated in footnote 1 of the *Notice*. A counterproposal filed in MM Docket 87-455 proposes to substitute Channel 256A for Channel 292A at Avon Park, Florida. Also, a counterproposal filed in MM Docket 89-455 requests the substitution of Channel 256C3 for Channel 292A at Avon Park, Florida. WGUL, in an abundance of caution, stipulates its intention to reimburse Highlands, licensee of Sta-

¹ The communities of Naples Park and Sebring have been added to the caption.

² Petitioner also filed a petition for rule making requesting the substitution of Channel 288C2 for Channel 288A at New Port Richey. This proposal required the substitution of Channel 289A for Channel 288A at Sebring, Florida. The proposal was found to be unacceptable for consideration because Channel 289A at Sebring was short-spaced to Station WWOJ, Channel 292A, Avon Park, Florida. On May 7, 1993, WGUL-FM, Inc. filed a Petition for Reconsideration of the Commission's refusal to accept the above-mentioned petition. In view of the final action in this proceeding granting an upgrade to Station WGUL(FM) on Channel 288C1, the Petition for Reconsideration is dismissed as moot.

³ Since petitioner provided a letter signed by Lowell A. Brubaker, President of Christian Fellowship Mission, Inc., licensee of Station WKZM(FM), consenting to the channel substitution at Sarasota, there was no need to issue an Order to Show Cause to Station WKZM(FM).

⁴ Public notice of the counterproposals (RM-8271, RM-8272 and RM-8273) was given on June 24, 1993, Report No. 1947.

⁵ In response to the *Notice of Proposed Rule Making* in MM Docket 87-455 (2 FCC Rcd 6537 (1987)), Women in Florida Broadcasting Company filed a counterproposal to substitute Channel 295C1 for Channel 292A at Cross City, Florida, substitute Channel 292C2 for Channel 292A at Holiday, Florida, substitute Channel 256A for Channel 292A at Avon Park, Florida, and substitute Channel 293A for Channel 292A at Sarasota, Florida. The counterproposal was denied in the *Report and Order* (4 FCC Rcd 5599 (1989)). And in response to the *Notice of Proposed Rule Making* in MM Docket 89-455 (4 FCC Rcd 7545 (1989)), Highlands Media, licensee of Station WWOJ, Avon Park, Florida, filed a counterproposal requesting the substitution of Channel 256C3 for Channel 292A at Avon Park. The *Report and Order* released March 4, 1995, granted the requested upgrade at Avon Park. The reference coordinates for Channel 256C3 at Avon Park are 27-29-05 and 81-29-23.

tion WWOJ, Avon park, for the reasonable costs associated with the change in channels. In support of its request, WGUL believes substantial public interest benefits would result from approval of its Alternative 1 proposal. WGUL, operating as a Class C1 facility would provide 1mV/m coverage to 2,089,200 people in an area of 7,410 square kilometers. According to WGUL, this is a six-fold increase in area and population over its current Class A station. WGUL states that the requested substitutions can all be made in compliance with the Commission's spacing requirements and that the stations at Sarasota, Sebring and Avon Park have agreed to the respective modifications of their licenses. Consequently, WGUL submits that the issuance of an "Order to Show Cause" to any of these licensees is unnecessary. As Alternative 2, WGUL proposes the substitution of Channel 288C2 for Channel 288A at New Port Richey and modification of WGUL's license accordingly. According to WGUL, the 1mV/m contour for Channel 288C2 at New Port Richey would encompass 1,734,000 people in 4,010 square kilometers, an increase of over 1,300,000 people in 3,000 square kilometers from its present coverage. WGUL explains that the channel changes necessary to implement Alternative 2 are identical to those for Alternative 1. Consequently, Channel 288C2 can be allotted to New Port Richey consistent with the Commission's Rules provided Channel 282A is substituted for Channel 288A at Sarasota, Channel 289A is substituted for Channel 288A at Sebring and Channel 256A is substituted for Channel 292A at Avon Park. With respect to Alternative 2, WGUL states its intention to reimburse the respective licensees at Sarasota and Sebring and to Avon Park, if deemed necessary.

4. Roper, licensee of Station WCAC(FM), Sebring, Florida, filed comments and a counterproposal (RM-8273). Roper advises the Commission that it supports the channel substitutions proposed by WGUL at New Port Richey and Sebring. However, Roper hereby proposes that Channel 289C3 be allotted to Sebring instead of Channel 289A as proposed in the *Notice*, and that the license for Station WCAC(FM) be modified to specify operation on Channel 289C3 in lieu of Channel 288A. Roper provided a technical statement which demonstrates that Channel 289C3 can be allotted to Sebring in accordance with the Commission's Rules with respect to all other stations and allotments with the exception of Channel 292A at Avon Park, Florida. Roper points out that there is a pending proceeding which requests the substitution of Channel 256A for Channel 292A at Avon Park and modification of the license for Station WWOJ accordingly. Consequently, Roper has not specifically requested this substitution. Highlands Media Company, Inc., licensee of Station WWOJ, Avon Park, filed supplementary comments in Docket 87-455 that it desired the substitution of Channel 256A for Channel 292A because of the public interest value and understands that the Avon Park substitution is no longer a pre-condition for the Holiday, Florida, upgrade. Further, Highlands Media Company, Inc. agrees not to invoke the Commission's processes under *Circleville, Ohio*, 8 FCC 2d 159 (1967), to seek reimbursement of its expenses for changing to Channel 256A. Nonetheless, consistent with the procedures set forth in *Brookville and Punxsutawney,*

Pennsylvania, 3 FCC Rcd 5555, 5556 (1988), Roper hereby represents that if the Commission rejects Roper's position that it is not obligated to reimburse Station WWOJ, Roper would agree to reimburse Station WWOJ for reasonable expenses incurred by Station WWOJ for changing channels.

5. Wodlinger, licensee of Station WIXI, Naples Park, Florida, submitted comments and a counterproposal (RM-8272). Wodlinger states that it currently operates Station WIXI on Channel 288A and holds a construction permit for Channel 288C3 (BPH-921125ID). Wodlinger now proposes to upgrade Station WIXI to Channel 288C2, utilizing its existing transmitter site. According to Wodlinger, the substitution would increase its coverage by nearly 30%. Wodlinger states that the upgrade at Naples Park requires the substitution of Channel 282A for Channel 288A at Sarasota, Florida, and the substitution of Channel 289A for Channel 288A at Sebring, Florida. Implementation of the proposal hinges upon the substitution of Channel 256A for Channel 292A at Avon Park, Florida, a substitution to which the license of Station WWOJ, Highlands Media Company, Inc., has already consented without requiring reimbursement. Wodlinger states that it will, if appropriate, assist WGUL in the reimbursement of the licensees of Station WKZM, Sarasota, Florida, and WCAC, Sebring, Florida, for their channel changes. Wodlinger commits to the early filing of an application to implement the upgrade and place the station on the air at Naples Park as quickly as possible.

6. Roper, in reply comments, continues to support the channel substitutions proposed in the *Notice* and its counterproposal requesting the substitution of Channel 289C3 at Sebring in lieu of Channel 289A as proposed by WGUL. Roper notes that the substitutions in this proceeding also require the substitution of Channel 256A for Channel 292A at Avon Park, Florida, and Channel 282A for Channel 288A at Sarasota, Florida. Further, in response to the comments filed by Highlands in this proceeding waiving its right to invoke Commission processes to seek reimbursement, Roper now withdraws its commitment to reimburse Highlands for changing channels at Avon Park, Florida.

7. Based on the above information, we believe the public interest would be served by the substitution of Channel 288C1 for Channel 288A at New Port Richey, Florida, and modification of the license for Station WGUL-FM to specify operation on Channel 288C1. A staff engineering analysis has determined that Channel 288C1 can be allotted to New Port Richey, Florida, at WGUL's specified site.⁶ To accommodate the upgrade at New Port Richey, we shall substitute Channel 282A for Channel 288A at Sarasota, Florida, and modify the license for Station WKZM(FM) to specify operation on Channel 282A.⁷ Although the counterproposal filed by WGUL requested the substitution of Channel 289A for Channel 288A at Sebring, we shall instead substitute Channel 289C3 for Channel 288A at Sebring in response to the counterproposal filed by Roper. Channel 289C3 can be allotted to Sebring at Roper's requested site in compliance with the Commission's spacing requirements.⁸ And finally, in response to the counterproposal filed by Wodlinger, we shall substitute Channel 288C2 for Channel 288A at Naples Park, Florida, and

⁶ The coordinates for Channel 288C1 at New Port Richey are 28-11-04 and 82-45-39.

⁷ The coordinates for Channel 282A at Sarasota are 27-16-30

and 82-28-54.

⁸ The coordinates for Channel 289C3 at Sebring are 27-20-30 and 81-28-05.

modify the license for Station WIXI to specify the higher class channel. Channel 288C2 can be allotted to Naples Park in compliance with the minimum distance separation requirements of the Commission's Rules at Wodlinger's specified site.⁹

8. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC Rcd 2d 159 (1967). WGUL has stated its intention to reimburse Station WKZM(FM), Sarasota, from Channel 288A to Channel 282A and Station WCAC(FM), Sebring, from Channel 288A to Channel 289A. WGUL is not responsible for expenses incurred by Station WCAC(FM) in changing frequencies from class A to class C3. Further, Wodlinger, licensee of Station WIXI, Naples Park, has stated that it will assist WGUL in the reimbursement of the licensees of Stations WKZM (288A to 282A) and WCAC(FM) (288A to 289A).

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 3, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
New Port Richey, Florida	288C1
Naples Park, Florida	288C2
Sarasota, Florida	273C, 282A, 293C2
Sebring, Florida	289C3

10. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WGUL, New Port Richey, Florida, IS MODIFIED to specify operation on Channel 288C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WCAC(FM), Sebring, Florida, IS MODIFIED, to specify operation on Channel 289C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WIXI, Naples Park, Florida, IS MODIFIED, to specify operation on Channel 288C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the License of Station WKZM(FM), Sarasota, Florida, IS MODIFIED, to specify operation on Channel 282A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in License BLH-6432 except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-6432, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

14. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, WGUL-FM, Inc.,

⁹ The coordinates for Channel 288C2 at Naples Park are

26-19-00 and 81-47-13.

licensee of Station WGUL-FM, New Port Richey, Florida, Roper Broadcasting, Inc., licensee of Station WCAC(FM), Sebring, Florida, and Wodlinger Broadcasting Company of Naples, Inc., licensee of Station WIXI, Naples Park, Florida, are each required to submit a rule making fee in addition to the fee required for the applications to effect the respective upgrade.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by WGUL-FM, Inc. on May 7, 1993, IS DISMISSED AS MOOT.

17. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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